

SPEECH

OF

MR. GRUNDY, OF TENNESSEE,

ON THE

Resolutions of Mr. Poindexter, and the amendment of Mr. Bibb, with regard to the Protest of the President of the United States.

In Senate, Tuesday, April 29, 1834—on the resolutions of Mr. POINDEXTER, and the amendment of Mr. BIBB, with regard to the Protest of the President of the United States.

Mr. GRUNDY rose and said:

MR. PRESIDENT: Men are never so much exposed to error as when called on to decide upon the propriety of their own conduct, or the extent of their own rights and privileges; and the danger is greatly increased when the decision is to be made amidst high public excitement produced by the contests of political parties. This is at this moment the condition of the American Senate. This body has done an act, the propriety of which is gravely called in question by the head of another independent Department of the Government, who considers himself deeply implicated and much injured, by the proceedings of the Senate.

It is a controversy of no ordinary character. The parties to it are high public functionaries: as high as any known to our Government or constitution. This controversy, if carried out to the extent contemplated by some gentlemen, may even shake the pillars of the fairest political fabric ever erected by the wisdom of man!

Under this view of the subject, can it be right that Senators should act under the impulse of angry passions? So far from it, it seems to me that cool deliberation, sober reflection, and, I will add, extreme caution, befit the occasion. I will not, therefore, obey the invocation of the Senator from Mississippi, (Mr. Poindexter,) when he asks Senators to bring their indignant feelings into action in the consideration of this subject. So far from it, except that agitation which the importance of the occasion produces, I will be calm, and command every turbulent and violent feeling to be still. Others may contend for victory. My humble labors shall be directed to the safety of the Republic, and the tranquillity of the country.

For the first time in the history of this Govern-

ment, now in operation 45 years, a motion is made to reject, or not to receive, a message from the President of the United States. This step can derive no aid or sanction from precedent. It has never been done before. No such proposition is to be found on the records of the proceedings of this body. If it can be justified, it must be upon some principle existing in the case itself.

I propose, in a brief manner, to examine whether such a principle can be found. The language of this communication is certainly respectful, decorous, and courteous, to this body. Not one harsh expression is used by the Chief Magistrate. *This*, even the gentleman from Virginia, (Mr. Leigh,) who does not view this paper, or any other act of the President, with too favorable an eye, admits; therefore, no exception to its reception, in respect to the language employed, can be maintained.

It is said, however, that some of the principles and doctrines it contains are unsound. Even if this were so, which I by no means admit, it would constitute no objection to its reception; because the Senate, by receiving it, gives no sanction to them. They are the President's views and opinions, not the views and opinions of the Senate, more than the sentiments contained in an annual message, which may be entirely at variance with the opinions entertained by the Senate. Still, such communications, and all others, made in the progress of the session by the Chief Magistrate, are always received, entered upon the journals, and printed by order of the Senate.

If, then, a well-founded objection exists, it must be in this, that the President should not have addressed the Senate at all upon this subject. Gentlemen on the other side say that such a message has never been transmitted by any President of the United States to this body. To this I answer, that the Senate, at no former period, has done an act which called for *such* a message. This body never, until *this* session, has passed a

vote of censure upon a **CHIEF MAGISTRATE**. Was Washington ever accused of crime by this body? Was the elder Adams, Jefferson, Madison, Monroe, or the younger Adams, ever condemned by a vote of the Senate? Were either of them ever formally accused of usurping powers not granted by the constitution or the laws, and by a deliberate vote of this body pronounced to be guilty? No, never!

If, then, there be any thing of novelty in this proceeding of the Executive, it has its origin and justification in the conduct of the Senate, and in every controversy of this kind, it is material to ascertain which party is the assailant, and which merely stands on its defence, in order to determine who should be answerable for the consequences that may follow.

The power of the Senate, and the propriety of adopting the resolutions complained of by the President, is defended upon the ground that it is preparatory to a legislative act. The history of this proceeding will best test the correctness of this allegation. The resolution was introduced on the 26th of December last, in company with another, declaring that the reasons assigned by the Secretary of the Treasury were insufficient and unsatisfactory. After a discussion of some months, the other resolution was referred to the Committee on Finance. This reference was with a view to legislative action. This every Senator knew; it was so avowed and understood by all. But *this* resolution remained upon the table of the Senate, because it was apparent that no legislative act could be predicated upon it. If gentlemen designed that legislation should spring out of this resolution, why was it not referred also to the appropriate committee? The conclusion is irresistible; none was designed by this body, whatever may have been the expectation of particular members. The other resolution contains fit matters for Congress to act upon. They can provide for the safe keeping of the public moneys in any depositories they please, and they ought to do so; nor shall we have discharged our duty to the country without making suitable provisions upon that subject, at the present session. Congress can also prescribe the terms and conditions upon which the public moneys shall be drawn from these depositories. They can throw what safeguards they please around the public treasure; and the President and all other officers will be bound to conform to the regulations thus prescribed; and in failure to do so, they will be guilty of misconduct in the discharge of their public duties.

Upon the resolution respecting the insufficiency of the reasons of the Secretary of the Treasury, which was reported upon favorably by the Committee of Finance, all and every act of legislation can be founded which may be deemed necessary in relation to the safe-keeping and preservation of the public money. But I should be glad to hear what provision, in the form of law, can be based upon the resolution now under consideration. If gentlemen shall say, they mean to legislate so as to prohibit removals from office without the consent of the Senate, in order to prevent a recurrence of such circumstances as have lately taken place, my answer is, that the constitution gives the pow-

er of removal in the unqualified manner in which it has been exercised, and Congress cannot take it away by law. Further, if the Senator from Kentucky, (Mr. Clay,) originally intended to proceed in this way, he abandoned that intention by the introduction of another resolution now pending before the Senate, in which it is declared expressly that this power of removal is not given to the Executive by the constitution.

I therefore conclude, that no legislative act was intended or could grow out of the resolution which has given rise to the Protest of the President now consideration. The language of the resolution is, "That the President, in the late Executive proceedings in relation to the public revenue, has assumed upon himself authority and power not conferred by the constitution and laws, but in derogation of both." Upon its face, and by its language, it is wholly retrospective, and does not indicate a design to legislate with a view to prevent repetitions of such infractions of the constitution and laws as are charged in it. As I understand it, and as I believe the People will understand it, it is wholly accusatory and condemnatory. As further evidence of this, it has been adopted for several weeks, and no proposition to proceed further upon the subject of its contents has been made by any Senator. It is a judgment against the President, pronounced by a majority of this body, condemning him of high crimes and misdemeanors—a judgment inoperative, so far as to deprive him of office or disqualify him from holding places of trust under the constitution, because the accusation was not preferred by the House of Representatives, the only accusers known to the constitution; because not pronounced by this tribunal upon a case regularly presented to its consideration and decision; and because not pronounced by two-thirds of this body. But for every purpose touching character and public standing, so far as the voice of twenty-six Senators can go, he stands condemned!

Gentlemen say, that although the Senate has pronounced the conduct of the Executive unconstitutional and illegal, it has not imputed to him a criminal intent. This is true; but surely I need not argue or produce authority to prove to this tribunal, composed chiefly of learned lawyers, the principle which exists in the criminal jurisprudence of this and every other enlightened country, that where an unlawful act is committed, which, if done with a criminal intent, would be punishable. The law presumes or supplies the criminal intent; and it lies upon the party accused to show that it was committed under circumstances which do away, or destroy that legal presumption. I will illustrate this. Suppose, on a day of battle, an American citizen shall be found in the ranks of the enemy; the law considers him a traitor; and upon proof of that fact, and that alone, he would be convicted and executed, because the presumption of the law, arising from the fact of his being in the ranks of the enemy, would be, that he was there traitorously—still, he might prove that he had been taken captive; that he had been placed in that situation by superior force. This would be a good defence. He would be acquitted: but until he shall make out his case, in the eye of the law, and in the esti-

mation of all men, he would be a traitor, and an enemy to his country. In case of homicide, the unlawful killing being proved, the law presumes the evil intent from the unlawful act. This Senate has found the Chief Magistrate guilty of an unlawful act, which, if done with an evil intent, makes him a high culprit. The law, according to the principle I have laid down, accompanies the act with the criminal intent, unless he shall show the absence of any evil design on his part.

[Here Mr. LEIGH asked Mr. GRUNDY to yield the floor to him; and remarked, that he wholly disagreed to the positions laid down by him.]

Mr. GRUNDY replied, this shows how fallible we are. We can't agree—such is the nature of our positions upon the plainest and best established principles. The principle I have laid down can be found even in Blackstone's Commentaries; can be found in every elementary treatise on criminal law. So familiar is it to my mind, that I can state it almost verbatim from memory, as found in Eart's Crown Law. The principle is, the implication of malice arises in every instance of homicide, amounting, in point of law, to murder, and in every charge of murder, the fact of killing being first proved, all the circumstances of accident, necessity, or infirmity, are to be satisfactorily proved by the prisoner, unless they arise out of the evidence produced against him.

I think I can say without vanity, that however defective in knowledge I may be on other subjects, I have some acquaintance with the principles of criminal law, and I am unwilling that it shall be believed that I misstate them here. My constituents and my colleagues of the other House, who I see before me, would not have charity enough to believe that I had done it ignorantly. The presumption with them would be, that it had been done knowingly and with an evil intent.

[Mr. CLAY here asked Mr. GRUNDY, if an indictment for treason would be good without charging that the overt-act had been done traitorously.]

Mr. GRUNDY replied, certainly not. Nor is the indictment, which we have found against the Chief Magistrate, good and sufficient in law. It is defective in form, and wants a portion of the substance, but we have found all the facts, necessary to a conviction, and we have pronounced the law upon them. We have said by our resolutions that the Chief Magistrate has done particular acts, and we have declared also, that the acts thus done were unconstitutional and unlawful. His case is adjudged. It is decided, if the position assumed by me in reference to the criminal intent be correct. Now, what remains to be done? Only that the House of Representatives present their indictment or articles of impeachment drawn out in the usual form, stating that Andrew Jackson, President of the United States, not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, did do and perform certain acts, (specifying them,) upon which this resolution is based, with an evil and wicked intent, and purpose, &c. Then he stands before us for trial. Already have we done that which will relieve us from all serious difficulty and trouble; should he deny the existence of the facts re-

ferred to by the resolution, the Senate has solemnly declared, that the facts do exist, they were found, before the trial commenced, before the accusation was preferred, and found by the ultimate triers of the facts, and their finding is on record. Hitherto, it has been understood that the law and the facts were open to a full and impartial investigation upon the final trial of a party accused. In this case, should the President be brought forward, and put upon his trial, and attempt to show, that all the powers exercised by him were conferred by the Constitution and laws: there stands the judgment of the Senate on record, declaring they are not given; the law of the case is settled as well as the facts. All this is done without notice, without defence, or opportunity of making defence; and done too by the highest judicial tribunal known to our Government. In other tribunals, the trial precedes the judgment. Before *this*, the sentence of condemnation is passed, and then comes the trial. A trial pro forma, merely, to comply with the letter of the Constitution. But suppose the evil intent is not to be legally inferred from the act, and that the accusers, must bring proof to establish it. This kind of investigation depends on no known and fixed principles or rules. Each individual most frequently decides according to his pre-disposition to think favorably or unfavorably of the party accused. Those who have habitually denounced the Chief Magistrate as a *tyrant, despot, usurper*, and that he is endeavoring to concentrate all power in himself, will feel inclined to think badly of his motives, whenever they are called on to judge of them. On the other hand, those who believe the Chief Magistrate to be a patriot, a friend to liberty and the Constitution, will not readily acquiesce in the opinion, that he has been guilty of intentional error. So that in fact, the mind of every Senator is made up, as to what his judgment would be, were the President now before us, on his final trial for the acts complained of. According to my humble judgment, although the Constitution designed that this body should be the ultimate judge between the State and its high officers, on account of its wisdom, independence, integrity, and impartiality, it has, by pre-judging the acts of the Chief Magistrate in this case, unfitted and disqualified itself, from discharging its functions in the manner contemplated by the framers of the Constitution; and the conclusion I draw from all this, is, that the Senate of the United States "has assumed upon itself, authority and power not conferred by the Constitution and laws, but in derogation of both."

I will now proceed to say something upon what has been urged by others, who oppose the reception of this Protest and its explanation.

Some of the remarks made by the Senator from New Jersey, (Mr. Southard,) I will neither repeat nor reply to. I can do neither, without the use of language which I do not indulge in elsewhere, much less will I do so in this honorable body—but upon this occasion, as upon all others, touching the veracity of individuals, whenever it may become my duty to decide, I claim the right, not only for myself, but for every American citizen, of making the decision according to the con-

victions of my own mind, paying a due regard to the opportunities which each of the parties may possess of knowing the facts of which they respectively speak. The same honorable Senator has charged the Chief Magistrate with an impertinent intrusion or interference between him and his constituents in presenting in this Protest the vote of the Legislature of New Jersey approving the acts of the President, and instructing her Senators to sustain him in the very measures for which the Senators of that State have, by their votes, condemned him. I say nothing of the harshness of the language employed by that honorable Senator. The term *indelicate* would have conveyed his meaning sufficiently strong; but I have something to say in regard to the right of the President, to speak upon this subject. The Chief Magistrate stands in a very different relation to the people of New Jersey, to what I and other Senators from different States, stand. My first duties are to the people of Tennessee—by them alone have I been elected. To their interest, my attention is particularly directed, and to them I am accountable; but the Chief Magistrate is the officer of New Jersey as well as of Virginia, Tennessee, and the other States. The people of New Jersey are his constituents, as well as the constituents of the honorable Senator. They are both the public agents or servants of the people of New Jersey; and when one of these agents shall pronounce the other guilty of an infraction of the constitution and laws, can the other be charged with intrusion, or improper interference, when he shall say to him, “you have pronounced me guilty of the commission of error, or a dereliction of duty; but our constituents and superiors have declared that I have done my duty, and you have committed an error, and in support, and as evidence that I am not mistaken, the Legislature of New Jersey, the generally acknowledged organ of the public will, have upon their records, declared, that I have *not* violated the constitution or laws.” Further, can it be wrong for the President to shew to his contemporaries, and to posterity, that although certain Senators did pronounce him guilty of misconduct, yet the Legislature of the very States represented by those Senators approved of his conduct, and the vote of condemnation given against him by those Senators was an act of disobedience to legislative instructions. These same gentlemen have often done the very acts which they complain the President has done; how often has each of them in our hearing declared that the members of the Legislatures have pronounced an erroneous judgment and have taken an appeal from the decision of their Legislatures to the People themselves. This is right when they do it, but if the President of the United States does not submit quietly under their judgment and denunciations, he is interfering improperly between them and their constituents. I think, it will be difficult for gentlemen to succeed in satisfying the People that they can interfere between members of the State Legislature and their constituents, can censure and condemn the Chief Magistrate, unimpeached by his constitutional accusers, and that the party thus treated has no right to speak and be heard in his own vindication and defence. Sir,

there is a strong sense of justice in the People of the United States, which forbids me to believe, that they will sanction such sentiments or such proceedings.

Gentlemen opposed to the Protest and explanation, change their position so frequently that it is impossible to say on what proposition we are finally to vote. When it was first presented, the Senator from Mississippi (Mr. Poindexter) moved its rejection. After a discussion of some days the Senator from Kentucky (Mr. Clay) moved an amendment proposing a *quasi* reception of it by which it was to be received, read and sentence passed upon its contents, but it was to be refused a place upon our journals. The other Senator from Kentucky (Mr. Bibb) now moves an amendment, by which the original proposition is to be restored and these papers to be rejected. I consider the proposition of the Senator from Kentucky (Mr. Clay) as the most exceptionable course that can be suggested. If this Protest be unfit to have a place upon our journals, it is unfit to be considered and have the judgment of the Senate upon the merits of its contents, besides, there would be an unfairness in this mode of proceeding; the judgment of the Senate is to form a part of the record of our proceedings; we exhibit to the world the judgment passed by the Senate against the doctrines contained in the Protest, but we conceal from it the subject-matter itself upon which that judgment is rendered. Those who read our journal have no opportunity afforded them of judging for themselves, whether the decision we have rendered be just or unjust. The object of the constitution in providing that a journal of the proceedings of each House of Congress should be kept, was to enable our constituents to revise and rejudge our judgments. The journal of this body is distributed throughout the United States, not only for the purpose of general information as to the course of the government, but for the purpose of enabling our constituents respectively, to see and know how each member has acted. By the course proposed to exclude this paper from the journals, and at the same time giving a judgment upon its contents, we deprive our constituents of an opportunity of deciding upon the propriety of our own conduct. I shall vote against the resolution proposed by the Senator from Kentucky (Mr. Clay) which condemns the contents of the Protest. When my constituents or any of them shall see this vote upon the journals, how can they determine whether I have voted right or wrong, unless they also see and read that paper upon the contents of which I have voted? So, on the other hand, a Senator gives a vote condemnatory of the Protest, how can his constituents determine whether he has acted correctly? Should the proposition last named prevail, our judgment against the opinions and doctrines contained in the Protest is sent abroad through the country and is transmitted down to posterity upon our records, but the Protest itself it put away among the rubbish in the Secretary's office; it is given to the moles and the bats, and will never, so far as depends on us, be exhibited to the present or future generations. Will not this body expose itself to the suspicion, at least,

that they were afraid that the American People should have a full and fair opportunity of deciding upon the merits of this controversy. If gentlemen are willing to meet this question fully and fairly, surely the way to do it is to receive the Protest—enter it upon the journal, and answer it in solemn form. I should be willing to see a committee selected, composed of the best talents to be found on the other side, for the purpose of preparing a response to it. These gentlemen, when they went to work and put down their reasons in opposition to the principles advanced by the President, and placed them side by side with his reasons in support of his principles would find more difficulty in the execution of this duty than when resort is had to general assertion and declamation. If this course were pursued, then the people of the United States would have both sides of this controversy presented to them. But by the course proposed, one side can only be heard or seen. If doctrines dangerous and unconstitutional be contained in this Protest, are gentlemen who entertain this opinion, doing their duty when they fail to expose them. If gentlemen are serious in this opinion, and no doubt they are, ought they not to take up the paper and answer every principle advanced in it—strip it of its fallacies, expose its deformities, or in other words nullify it. Then the President can have no advantage over this body; the refutation will go along with the Protest and its pernicious influence will be destroyed; but gentleman will not agree to this course; they cannot answer it; therefore they will not attempt it; if they were competent to the task, they would make the trial, overturn the arguments, and reason this Protest down. Sir, I wish to see their skill put to this test; I wish to see them advance foot to foot, lay hold of this Protest, and prove, if they can, their assertions, to the satisfaction of the American people. If they shall fail to adopt this course, I should think the conclusion in the public mind would be, that the Protest is not susceptible of a satisfactory refutation. I will not at this time go into an examination of the merits of this paper—if it shall be received and referred to a committee, and that committee shall report that the doctrines and opinions contained in it are dangerous and unconstitutional, then the merits of the paper will be fairly before the Senate, and an opportunity afforded for a full discussion; and upon that occasion, I may ask the indulgence of the Senate to be heard upon the merits of the Protest and explanation. I understood the Senator from S. Carolina, (Mr. Preston,) as expressing the opinion that the explanation contained in the second message, amounted to a retraxit of the obnoxious doctrines contained in the original protest.

[Mr. PRESTON here remarked that he ought not to be understood as assenting to the idea that the second message removed his objections to the first.]

Mr. GRUNDY proceeded. I think myself the original protest sufficiently plain and intelligible; it is however subject to misconstruction. The explanatory message puts the opinions of the President beyond all cavil. In it he states distinctly and explicitly, what claim the Executive has in

reference to the public money, and shows it not inconsistent with the uncontrolled power of Congress over the whole public treasure. And all we ask is, that these opinions may be placed before the People of the U. States, that they may judge of their soundness. Gentlemen have insisted that we have no precedent to justify a message of this character to the Senate. They are mistaken. When the Senate of the United States rejected a nominee to office, President Washington sent them a message in which he set forth the just claims of the nominee to public consideration, and his qualifications to fill the office to which he had been nominated; and he did chide the Senate and suggest to them, that had they asked of him information, they would have received such an account of the individual as would have produced a different decision. He also suggested to them the propriety of making inquiries of him in all future cases, where they were not themselves sufficiently acquainted with the individual nominated. This message was received, entered upon the journals of the Senate, and had such an effect upon the proceedings of this body, as that, from that day to the present, the course suggested by him has been pursued. In that case, the inconsiderate and erroneous conduct of the Senate was distinctly pointed out, but the Senate were not disposed, unnecessarily, to take exception to the conduct of the Chief Magistrate. There was no proposition then made to reject the message or to pass a vote of disapprobation upon it.

If we turn to the history of the State Governments, we shall find, that the present Chief Magistrate is not the only aged patriot, who after having spent almost a life of toil and usefulness for his country, has been assailed by his political adversaries, in his old age, and an effort made to despoil him of his well-earned fame. After Governor McKean, of Pennsylvania, had spent a long life in the service of his country, after he had acted as President of the old Congress, had affixed his name to the Declaration of Independence, had contributed to the adoption of the Federal Constitution, as a member of the convention that ratified it in his own State—after he had, with distinguished reputation, for many years filled the highest judicial station in his own State—when age had enfeebled his body, but left the vigor of his mind unimpaired, he was elected Governor of Pennsylvania—he discharged all the duties of this high and difficult station, in the most trying times, with fidelity and ability. All this, however, could not secure him from the virulence of party feelings. When his sun was almost set—men, actuated by party hatred, rose up in the Legislature of Pennsylvania and charged him with a violation of the constitution and laws, and attempted to expel him from the high and last office he ever filled. Articles of impeachment were prepared by a committee, and preferred against him, charging him with high crimes and misdemeanors, and it is a little remarkable that in their report, they indulge in that same anticipated triumph, and the same accusatory language and broad assertion, which are so often employed in reference to the present Chief Magistrate. The committee in that case said, “that they

deemed it superfluous to sustain the resolution which is submitted, by an appeal to the patriotism or intelligence of the House. They are aware that they are anticipated by its judgment and integrity. The facts speak so loudly for themselves, that the feeble voice of the committee cannot be raised to reach their tone—justice and the public welfare demand punishment. If we desire to preserve our constitution in its letter and its spirit, then punish the infraction of it. Do we desire the government of laws, instead of the *will* of a public functionary, then make him amenable to justice who dares substitute *his will* for that of the laws. Do we desire to preserve our republican institutions, then permit no man to trample upon them with impunity. Do we hold the right of electing our public functionaries to be the essence of free government, and its exercise to be dear to the freemen of Pennsylvania, then render him constitutionally accountable who, by an arbitrary fiat, has laid it prostrate. Do we consider virtue the vital principle of republican Government, then punish the officer who attacks republican virtue in her citadel; who, in disregard of public sentiment, and public duty, and in defiance of solemn obligation, treats the People as his patrimony, and their rights as his inheritance."

From the extracts which I have read, the analogy between the case of the Chief Executive of Pennsylvania and that of the present Chief Magistrate of the United States, is most striking. The accusers in that case, anticipated the final success of their accusation, with the same confidence that the accusers of the present Chief Magistrate claim the ultimate decision of the American People. They declared that justice and the public welfare demanded his punishment. They charged that he had substituted *his own will* for that of the laws. They invoked the lovers of the constitution to punish him who had prostrated it by his arbitrary fiat. They charged him with disregarding public sentiment and public duty, and treating the People as his patrimony, and their rights as his inheritance. The resemblance between the report of that committee and the language we daily hear, is so strong, that the first would well answer for a precedent or form for the attacks made upon the present Chief Magistrate. But, sir, how did this exhibition of charges terminate? The same way as I apprehend those now made against the Chief Magistrate of the United States will terminate—in the discomfiture and defeat of the accusers, and in the triumph of the accused. The House of Representatives of Pennsylvania refused to vote the impeachment. They refused to tarnish or sully the fair fame of one of their first citizens. It should be remarked that Gov. McKean stood acquitted and discharged upon the records of the Pennsylvania Legislature. Still the accusation remained upon their journals. It was unanswered, except by the vote of the majority of that body. On the next day after the articles of impeachment were rejected, he sent a message to the House of Representatives, containing his vindication, and asked that it might be placed upon the journals of that body, not as a matter of constitutional right, but as an act of justice, in order that all who might read the charges

exhibited against him, might in the same book or record read the refutation of them. The House of Representatives did enter it at large on their journals. This is precisely what the President of the United States now asks. In his vindication, Governor McKean takes a retrospect of his past life, and refers to what he had done for his country, as high evidence that he was incapable of committing crimes and misdemeanors. And, Mr. President, try it when you will, let an aged patriot be assailed when he is about to leave the stage of active life, let the attempt be made to strip him of his honors and his fame, let the billows of party rage beat furiously upon him, he will look back to all he has done and all he has suffered, and when the facts justify, as they do in this case, he will remember and he will say to his countrymen, I have spent sleepless days and nights in your service—I have suffered cold and hunger—I have met the enemies of my country—I have bared my bosom to danger, and have bled for your liberties, and I now appeal to you to decide whether I can be your enemy, or an enemy to your free institutions. These are the natural reflections and feelings of that individual who has been made the subject of accusation in this Senate. He no doubt feels great solicitude, not only to possess the good opinion of his countrymen who are his cotemporaries, but that posterity, when his character shall be presented to it, shall consider him to be what he has labored to be through a long life of public service and toil. And, Mr. President, let us do as we may, when the party strifes of the present times shall cease, and this individual out of the way of aspirants to office and public favor, and faithful and impartial history shall present him to future times, justice will be awarded to him. Then men of the south will see and acknowledge, that when they were borne down by oppressive taxation in the form of a protective tariff; that he, from the moment he came into office, assiduously exerted himself for their relief; that in every annual message transmitted to Congress, he recommended and urged an amelioration of their condition. When that gigantic plan of profusion and waste of public treasure, misnamed the American System, shall have gone into entire disrepute, the author of the veto on the Maysville road bill will be pointed to as the individual who arrested that scheme of policy which threatened to bring ruin upon the People of this republic. Then, too, it will be admitted by all, that with no other motive save that of the public good, he encountered successfully the Bank of the United States, a vast moneyed power, in a conflict with which any other man would have faltered and failed, and all this for the purpose of securing and placing on a permanent basis the rights and liberties of his countrymen.

Were there no precedent or authority on this subject, what does fairness and impartial justice demand of us? We have placed on our journals a resolution condemning the President's conduct, and shall not the other side be seen? If the sentence of the Senate be right; if we have confidence in our own decision; we ought not to be afraid to place on our journals what the accused has said in his vindication.

It is intimated that a new oath of office has lately been administered to the Clerks in the different Departments, with a view, as is supposed, to secure their allegiance to the present Chief Magistrate. I will state the facts as they really are, for the purpose of showing what light, airy, and unsubstantial pretences are seized hold of with eagerness, in order to bring this administration into disrepute. By act of Congress, passed in 1791, each clerk before he enters upon the duties of his office, is required to take an oath before some Judge of the Supreme Court of the United States, or a District Judge, to support the Constitution of the United States, and faithfully to perform the trusts committed to him. During the present session, a very respectable member of the other House, as he has informed me himself, addressed a letter to the different Secretaries, or some of them, inquiring whether the oath prescribed by law, had been taken by their Clerks, and upon examination it was ascertained that the oath had been administered to most of the Clerks, by Magistrates of this District and not by a Supreme or Federal District Judge, as required by law. Upon this discovery, the Clerks were required to take the oath prescribed by the act of 1791, before the persons authorized to administer it by that act. This mistake of the Clerks, however, was not of recent origin; it is a gray headed error, much older than that administration in which the Senator from Kentucky, (Mr. Clay,) bore a distinguished part. This, sir, is the new oath, invented in these Jackson times, and odium is attempted to be thrown upon this administration for correcting an error which grew out of the inattention of their predecessors; equally unfounded is the suggestion that any apprehension is to be entertained, that this Senate is to be disturbed in its deliberations by an armed force. This no one fears, no one believes, and there is as little foundation for the apprehension that the President of the United States will, by the exertion of constitutional or unconstitutional power, put an end to our deliberations. My own impression is, that we can remain here quietly if we shall choose to do so, until the fourth of March next, without any molestation from that quarter. Nor have I any confidence in the rumors that have gone abroad that a military force is to make its appearance here, for the purpose of overawing the President and Congress, and compelling them to re-charter the Bank of the United States. No man who has sense enough to command a militia company—no man who has bravery enough to fight will ever come to this city on such an errand.

Having received no petitions or memorials from the citizens of Tennessee, upon the subjects which now agitate the country, I have been entirely silent upon the presentation of those emanating from other quarters; being willing that those who represent these petitioners and memorialists should lay them before the Senate in their own way. But I will take this occasion to state to the Senate my opinions upon a few of the points heretofore discussed by others. Although I differ altogether in opinion from a majority of the memorialists as to the cause of the embarrassment and distress which prevail in the country, I am gratified to see the

general spirit which pervades these memorials. They evince a feeling which affords a confident assurance that the rights of the American People can never be invaded with impunity by any functionary of this Government. If such sensitiveness is displayed when it is only imagined that their Chief Magistrate has committed an error, what will not the same spirit do, should their rights be actually invaded? It will rise up and put down any man, or set of men, who shall be guilty of usurpation and oppression. As to the harshness of language employed in these memorials, I will say this, that the right to petition and memorialize is a constitutional right; and, although citizens may not measure their terms and phrases exactly to suit our taste, still, it is better to let them pass uncensored and uncomplained of by us; although I confess I should prefer to see petitioners confine their remarks and strictures to those representing them, and not travel out of their own districts and territories, for the purpose of lecturing those not elected by, nor amenable to them. Yet, even this course is without remedy; it is the excessive use of a right which you cannot prevent, without endangering and impairing the right itself. It is like the licentiousness of the press, which cannot be cured without destroying its liberty.

That pecuniary distress exists in the country, no one can doubt. As to its extent or degree, no accurate opinion can be formed. My own belief is, that it may become much greater. This depends upon the will of the Bank; for it certainly has the power to increase it. The existence of this distress, and the probability of its becoming greater, furnishes no argument to me in its favor. So far from it, it proves to my satisfaction that no corporation capable of bringing such distress and ruin upon our citizens, ought to exist in our country. Without it, I admit we shall have less of the show and splendor of wealth, but we shall possess more substantial security and happiness.

I wish to say a few words upon the name and designation of parties which our opponents have lately assumed and taken upon themselves. They denominate themselves "*Whigs*," and I suppose they wish to affix the correlative term, "*Tory*," upon their adversaries. I wish to be distinctly understood as saying, that the great body of individuals, composing every political party in this country, are *Whigs*. It is an appellation common to all parties; it is a generic term, and no one class of them has a right to appropriate it to themselves exclusively; and nothing but a spirit of monopoly could give rise to the effort now making by a portion of the politicians of this country. This name, it is imagined, will bring together parties and men who differ on all the political measures which have and still divide the People of the United States—men who hold no one political opinion in common—who are separated from each other as widely as the poles, are to put on this cognomen or family name. There is but a single point of contact between them, which is, a dislike to the present Chief Magistrate; and I suppose all his friends and supporters, who I believe compose a large majority of the American People, are to receive the opposite appellation. That distinguished representative from Kentucky, (Col. Johnson,) whose

limping gait at every step bespeaks chivalry and patriotism—he who, when a large and respectable portion of our citizens, impelled by what they believed a sense of duty, and without any design on their part to interfere with the rights of conscience in others, applied to Congress to arrest the transportation of the mail on the Sabbath day, took up the subject, investigated it, and by a forcible, argumentative, and luminous report, convinced many of the petitioners themselves that it was inconsistent with the principles of our institutions, and of the federal constitution, for Congress to act on the subject—is to be denominated a tory. And he who fought the last and best battle of the late war—a battle which shed such lustre and splendor on the American arms, and terminated gloriously a contest carried on to preserve our national rights—is to be called the head and leader of tories. I tell gentlemen this device will not do! Whatever was the original meaning of whig and tory in England, we have affixed to it an American meaning, one which not only the learned, but the unlearned, understand. My constituents have not all read the history of Charles II.; they consist of men and their descendants who fought in the revolutionary and last war, and who fought the Indians in the early settlements of the western country; they are also supporters of this administration, and should any mango amongst them, and call them tories, he would be apt to receive a very prompt signification of the meaning they attach to the term. I do not think gentlemen are doing justice to their friends, when they attempt to clothe them now with this name or covering of whiggism, as though it were a new garment, because this implies that it was not possessed before, when in truth it has been worn by them and their fathers for more than a half century, and is made of such excellent materials, that it has become none the worse by wear. From what has occurred this morning between the Senator from Kentucky (Mr. Clay) and the Senator from North Carolina, (Mr. Mangum,) I find I was mistaken in one thing. I had supposed that the union between the national republicans and State-rights men, even of the strictest sect, had been consummated. I had no doubt if it were so, that a divorce would speedily take place, because, for them to remain together without an abandonment of their principles on one side or the other, I knew was wholly impossible. From the sentiments expressed by the Senator from North Carolina, in this day's debate, if he be not in a state of rebellion, he certainly feels a *little insurrectionary*, or insurrectional, towards the party with whom he is operating. He says that he is against all assumptions of power not granted by the constitution, whether by the Executive, the Legislative, or the Judicial Departments of the Government; this, he says, is the whiggism of the South. Now, I ask him, if the imposition of an oppressive protective tariff upon his principles savors of whiggism? Yet a majority of those who are now acting with him advocate it. I ask him further, does the exercise of the power to make internal improvements by the Federal

Government constitute any portion of a claim to whiggism in the South? Is a Bank of the United States a whiggish institution, according to southern doctrines? I presume he will answer all these inquiries in the negative. If all this will not do to prove that the national republicans and southern gentlemen cannot stand and act together, surely the fact that the national republicans were almost unanimously in favor of the force bill and in favor too of the proclamation, will be decisive; for I always have understood, and I presume it will not be denied, that these were the measures of this administration most censured and condemned by the South. Under the name and standard of the National Republicans, the South will not, cannot rally, because the principles of that class of politicians, in the opinion of the South, leads to consolidation. Under the name of the State rights party the Nationals will not unite, much less under that name which the S. Carolina politicians have assumed, because their principles, in the opinion of the Nationals, lead to disunion. In this dilemma, as it is impossible to find out or invent a name or appellation at all significant of their principles; as they are contradictory and inconsistent with each other; and as they are anxious to get together, they have fallen upon the expedient of taking to themselves the name or title of whigs, which is extensive enough in its meaning to include every American citizen who loves his country, but has nothing characteristic in it of their peculiar tenets or political principles, and is broad enough to include, not only the opponents but the friends of the present administration. Before I can agree that our opponents shall have the exclusive possession of the title whigs, I wish to make some further inquiries; where are those men who, during the last war, discouraged the enlistment of soldiers? Where are those who used their influence to prevent loans of money to the Government in its utmost need? Where are all the moral traitors of that gloomy and trying period? Where are those who thought it immoral and irreligious to rejoice at our victories and mourned at the defeat of our enemy? Where are those who denounced James Madison as a tyrant, usurper, and despot, and proclaimed that the country would never prosper until he was sent to Elba? Where are the "blue-light" gentry, who gave private signals to the enemy to enable them to murder our citizens? These men are not to be found in the ranks of this administration; they will pursue the present Chief Magistrate with their hatred, to his grave, and when dead their enmity will not cease; they have their reasons for it; he did their friends too much damage at the city of New Orleans ever to be forgiven.

I will conclude by expressing my most earnest wish that the subject now under consideration may not be decided rashly and under the influence of party excitement, but with coolness and deliberation, and that the decision may be such as will best comport with the dignity of this body, and promote the harmony and prosperity of our common country.